

## § 890.1032

The suspending official has wide discretion to decide whether to suspend a provider. A specific finding of immediacy or necessity is not required to issue a suspension. The suspending official may draw reasonable inferences from the nature of the alleged misconduct and from a provider's actual or potential transactions with the FEHBP.

### § 890.1032 Length of suspension.

(a) *Initial period.* The initial term of all suspensions shall be an indefinite period not to exceed 12 months.

(b) *Formal legal proceedings not initiated.* If formal legal or administrative proceedings have not begun against a provider within 12 months after the effective date of his suspension, the suspending official may:

(1) Terminate the suspension; or

(2) If requested by the Department of Justice, the cognizant United States Attorney's Office, or other responsible Federal, State, or local prosecuting official, extend the suspension for an additional period, not to exceed 6 months.

(c) *Formal proceedings initiated.* If formal criminal, civil, or administrative proceedings are initiated against a suspended provider, the suspension may continue indefinitely, pending the outcome of those proceedings.

(d) *Terminating the suspension.* The suspending official may terminate a suspension at any time, and shall terminate it after 18 months, unless formal proceedings have begun within that period.

### § 890.1033 Notice of suspension.

(a) *Written notice.* OPM shall send written notice of suspension according to the procedures and methods described in § 890.1006(c)–(f).

(b) *Contents of notice.* The suspension notice shall contain information indicating that:

(1) The provider has been suspended, effective on the date of the notice;

(2) The initial period of the suspension;

(3) The basis for the suspension;

(4) The provisions of law and regulation authorizing the suspension;

(5) The effect of the suspension; and

(6) The provider's rights to contest the suspension.

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### § 890.1034 Counting a period of suspension as part of a subsequent debarment.

The debarring official may consider the provider's contiguous period of suspension when determining the length of a debarment.

### § 890.1035 Provider contests of suspensions.

(a) *Filing a contest of the suspension.* A provider may challenge a suspension by filing a contest, in writing, with the suspending official not later than 30 days after receiving notice of suspension. The suspension shall remain in effect during the contest, unless rescinded by the suspending official.

(b) *Informal proceeding.* The suspending official shall use informal, flexible procedures to conduct the contest. Formal rules of evidence and procedure do not apply to this proceeding.

### § 890.1036 Information considered in deciding a contest.

(a) *Presenting information and arguments to the suspending official.* A provider may submit documents and written arguments in opposition to the suspension, and may appear personally, or through a representative, before the suspending official to provide any other relevant information.

(b) *Specific factual basis for contesting the suspension.* The provider shall identify specific facts that contradict the basis for the suspension as stated in the suspension notice. A general denial of the basis for suspension does not raise a genuine dispute over facts material to the suspension, and the suspending official shall not give such a denial any probative weight.

(c) *Mandatory disclosures.* Any provider contesting a suspension shall disclose the items of information set forth in § 890.1023(c). Failure to provide such information completely and accurately may be a basis for OPM to initiate further legal or administrative action against the provider.

### § 890.1037 Cases where additional fact-finding is not required.

The suspending official may decide a contest without an additional fact-finding process if:

(a) *Previously adjudicated facts.* The suspension is based on an indictment or on facts determined by a prior adjudication in which the provider was afforded due process rights. Examples of due process proceedings include, but are not limited to, the adjudication procedures associated with licensure revocation, suspension, restriction, or nonrenewal by a State licensing authority; similar administrative adjudications by Federal, State, or local agencies; a criminal conviction or civil judgment; or an action by the provider that constitutes a waiver of his right to a due process adjudication, such as surrender of professional licensure during the pendency of a disciplinary hearing, entering a guilty plea or confession of judgment in a judicial proceeding, or signing a settlement agreement stipulating facts that constitute a sanctionable violation. Neither the existence of the prior adjudication nor any of the underlying circumstances are considered to be subject to genuine factual dispute as part of the suspension proceeding.

(b) *Advisory by law enforcement officials.* OPM is advised by the Department of Justice, the appropriate U.S. Attorney's Office, a State attorney general's office, or a State or local prosecutor's office that proceedings before a presiding official would prejudice the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension.

(c) *No bona fide dispute of material facts.* The information, arguments, and documents submitted to the suspending official do not establish that there is a *bona fide* factual dispute regarding facts material to the suspension.

#### **§ 890.1038 Deciding a contest without additional fact-finding.**

(a) *Written decision.* The suspending official shall issue a written decision on the contest within 30 days after the record closes for submitting evidence, arguments, and information. The suspending official may extend this timeframe for good cause.

(b) *No further administrative review available.* The suspending official's de-

cision is final and is not subject to further administrative review.

#### **§ 890.1039 Cases where additional fact-finding is required.**

(a) *Criteria for holding fact-finding proceeding.* The debarring official shall request another OPM official ("presiding official") to hold an additional fact-finding proceeding if:

(1) Facts material to the suspension have not been adjudicated in a prior due process proceeding; and

(2) These facts are genuinely in dispute, based on the entire administrative record available to the debarring official.

(b) *Qualification to serve as presiding official.* The presiding official is designated by the OPM Director or another OPM official authorized by the Director to make such designations. The presiding official shall be a senior official who is qualified to conduct informal adjudicative proceedings and who has had no previous contact with the suspension or the contest.

(c) *Effect on contest.* The suspending official shall defer a final decision on the contest pending the results of the fact-finding proceeding.

#### **§ 890.1040 Conducting a fact-finding proceeding.**

(a) *Informal proceeding.* The presiding official may conduct the fact-finding proceedings as informally as practicable, consistent with principles of fundamental fairness. Specific rules of evidence or procedure do not apply to these proceedings.

(b) *Proceeding limited to disputed material facts.* The presiding official shall consider only the genuinely disputed facts identified by the suspending official as relevant to the basis for the suspension. Matters that have been previously adjudicated or which are not in bona fide dispute within the record shall not be considered by the presiding official.

(c) *Right to present information, evidence, and arguments.* A provider may appear before the presiding official with counsel, submit oral and written arguments and documentary evidence, present witnesses, question any witnesses testifying in support of the suspension, and challenge the accuracy of